IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943

No. 336

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel.,
THE CHICAGO BAR ASSOCIATION, et al.,
Relators-Respondents,

vs.

THOMAS V. NOVOTNY, SR.
Respondent-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

THOMAS V. NOVOTNY, SR.,
Pro se.

BARNARD & MILLER, Printers, FRAnklin 0562, CHICAGO

INDEX.

Subject Index.

Cases Cited.

Text Book Citation.

Statutes Cited.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1943

THE PEOPLE OF THE STATE OF ILLINOIS,
EX REL.
THE CHICAGO BAR ASSOCIATION, ET. AL.
Relators-Respondents,

vs.

THOMAS V. NOVOTNY, SR.
Respondent-Petitioner.

PETITION FOR WRIT OF CERTIORARI.

TO THE HONORABLE JUDGES OF THE
SUPREME COURT OF THE UNITED STATES:

Petitioner, Thomas V. Novotny Sr., prays the issuance of a Writ of Certiorari, to review the decision by the Supreme Court of Illinois, rendered March 21, 1944, in case No. 27797, in that the Court denied a Petition for a rehearing and adhering to its Opinion filed March 21, 1944. The Order denying the Petition for rehearing was made without any further Opinion, except that it revised in some respects the language thereof. Petition for rehearing denied May 11, 1944.

STATEMENT OF FACTS.

This action came before the Supreme Court of the State of Illinois upon the filing in said Court an Information by the Relators, the Chicago Bar Association, against the Respondent, Thomas V. Novotny Sr., and Hermann P. Haase (in the Opinion "It is the order of the Court that Hermann P. Haase be deemed purged of his contempt and the Information as to him, dismissed") wherefore this Petition for Certiorari is made by Thomas V. Novotny Sr. alone.

The Information alleges, that Relators inform the Court that Respondent, Thomas V. Novotny Sr., is a layman, not entitled or licensed to practice law in the State of Illinois; that he maintains an office in the City of Chicago, and is engaged in the practice of law. That it appears on the door of his said office:

"Law Offices,
Thomas V. Novotny Sr."

That it appears in Sullivan's Law Directory, 1943-44 edition, being a list of members of the Bar of Chicago, at page 20:

"Novotny, Thomas V. Sr. (Novotny & Haase)"

That it appears in the Chicago Classified Telephone Directory, of September 1943, under the classification "Lawyers":

"Novotny, Thomas V. Sr."

That Respondent has printed and is using letterheads containing:

"Novotny & Haase,
Attorneys at Law".

That Respondent has printed and is using covers for

backing legal documents and pleadings, on which covers there appears:

"Thomas V. Novotny
Lawyer."

That Respondent has caused to be printed and posted in various public places in and around Berwyn, a suburb of Chicago, where Novotny resides, a placard, reading as follows:

"The Blue Bird Bus case is up for hearing Monday, Sept. 27, 10 A. M. All who may, please attend. Novotny & Haase, Attorneys."

That there is now pending before the Supreme Court, a cause in which the Brief and Argument, etc. were prepared and filed by Novotny & Haase, Attorneys for Appellant.

That at the January term 1943, and prior to the occurrences of all the matters above set forth, the Supreme Court of Illinois denied a Petition of Thomas V. Novotny Sr. to have his name placed upon the Roll of Attorneys.

That said Novotny was disbarred in Minnesota, on the 25th day of July 1913, and was not authorized to practice law in the State of Minnesota at the time he filed said Petition.

That Novotny has not been admitted to the Bar of the State of Illinois, and that he does not possess the qualifications prescribed (by the State of Illinois) as a condition precedent to admittance to the Bar.

The prayer of said Information is that said Novotny be perpetually enjoined and restrained from engaging in the practice of law in the State of Illinois, and that he show cause why he should not be punished for contempt of Court for the commission of the offenses. To said Information are annexed several exhibits, verifying the statements alleged therein.

The Answer of the Respondent, Thomas V. Novotny Sr. sets forth: That he denies he is a layman and not admitted to practice law in the State of Illinois, but to the contrary says that he is now and has been for the past thirty-one years, a duly licensed and qualified Attorney at law, according to the Statutes of the State of Illinois, and in all respects has complied with the Rules and Regulations of the Supreme Court of Illinois. He admits that he maintains an office in Chicago, and is engaged in the practice of law, and admits that his name appears on the door of said office, under the title "Law Office of Thomas V. Novotny Sr."; he admits all the allegations of said Information as to the letterheads, Attorneys' Directory, Telephone Directory, covers of legal documents, and the advertising as to the Blue Bird case; admits that he filed a Petition in 1943 to have his name placed upon the Roll of Attorneys, but denies that the Court entered an Order, denying said Petition, but says that said Petition was dismissed because it did not state sufficient facts upon which the Court could grant the prayer of said Petition. The Answer further sets forth that he is of the age of sixty years, married, and the father of four sons and two daughters, five of his children now being in the service of the armed forces of the United States; that he has always enjoyed the respect of his neighbors and citizens of the community in which he resides; that he is a graduate of the St. Paul College of Law, class of 1907; that he was duly admitted to practice law in the State of Minnesota on the 20th day of June 1907; that he was, on the 20th day of June 1912, requested by Daniel J. Byrnes, the then General Attorney for the Chicago & North Western Railroad Co., to come to the City of Chicago and associate himself with the firm of Byrnes & Byrnes; that he did come to Chicago, and on June 22, 1912, appeared before the Supreme Court of the

State of Illinois, and upon motion of the said Daniel J. Byrens, and Patrick H. O'Donnell, two of the most prominent Attorneys in Chicago, and upon presenting to the Court a certificate of good moral character, made by the Honorable William Lewis Kelly, Judge of the District Court of Ramsey County, Minnesota, and Attorney Benjamin J. Calmenson, one of the most prominent Attorneys in St. Paul, Minnesota; and upon the presentation of his license to practice Law in Minnesota, the then Supreme Court "being apprised of all the facts" as required by law, instructed the Clerk of the Court to administer the Oath of Office, and to enroll his name on the Roll of Attorneys; that he did then and there take the Oath of Office as an Attorney, and in due time a certificate of his admission was mailed to and received by him, all of which Respondent is ready and willing to prove by competent evidence, and the correspondence of the then Clerk of the Supreme Court of the State of Illinois. The Reply further sets forth that on the 1st day of November 1929, a certain Complaint was filed in the Municipal Court of Chicago, a Court of competent jurisdiction, in which it was set forth that Respondent was never admitted to practice Law in the State of Illinois; that he was practicing Law without first procuring a license so to do; that said cause was tried by a jury of twelve men, and the prosecution of said cause was conducted by two Assistant States Attorneys of Cook County, an Assistant Attorney General of the State of Illinois, and three Attorneys representing the Chicago Bar Association, and that a stipulation was made in open Court that the finding of the Court and jury should forever settle the question of Respondent's right to practice Law in the State of Illinois. That upon a hearing of said cause, the Court and jury returned a verdict of "Not Guilty", and judgment entered upon said verdict; that the sole issue in said cause

was whether or not the Respondent had been admitted to practice Law in the State of Illinois; and that said judgment stands now, and has at all times, been in full force and effect. The Reply further states that Respondent, for the past 31 years, with the full knowledge of the State's Attorney of Cook County, the Attorney General of the State of Illinois, and the Chicago Bar Association, has held himself out as a duly licensed and qualified Attorney at Law; and that at no time have any of said parties ever questioned or challenged the right of Respondent to practice Law, except as above set forth. The Reply further alleges that on the 12th day of September 1912 he appeared before the then Warden of the Cook County jail, and requested that his name be enrolled upon the Attorney's Roll thereof as being duly qualified to consult with the inmates of said jail, and that he then and there submitted to said Warden his certificate of admission to the Illinois Bar, and did then and there subscribe his name upon said Attorney's Roll kept by said Warden, and that said Roll now shows, and has ever since the 12th day of September 1912 shown the following notation: "Thomas V. Novotny, registered Sept. 12, 1912. Certificate damaged. Duplicate to follow" That during the month of August 1942, the Attorney General's office made a full and complete investigation of the right of Respondent to practice Law in the State of Illinois, and that Respondent and Hermann P. Haase were informed by said Attorney General's office that the Respondent's record was "O. K." The Reply of Respondent prays that the Court dismiss the Information, for laches appearing on the face thereof, and as alleging matters that were *res adjudicata* of the issues, having been decided by a Court of competent jurisdiction; or if the Court was not inclined to dismiss the Information, then to refer the Information and Reply to a Commissioner of the Court,

where the matter could be fully presented. To this Reply are attached and made a part thereof, certain exhibits, *i. e.* A letter of the Clerk of the Supreme Court, dated Jan. 19, 1919, in which said Clerk says, "I find in my file a copy of a letter I sent you on Dec. 17, in which I was returning your mutilated certificate; A letter of the Deputy Clerk of the Supreme Court of Illinois, in which he says, "I am returning herewith the mutilated certificate"; an affidavit of the Warden of the Cook County jail, setting forth that there appears on the Sheriff's Attorney's Docket, the notation: "Registered September 1912. Certificate damaged, and signed by Thomas V. Novotny Sr.; an affidavit of Thomas J. McCormick, a practicing lawyer in the City of Chicago, stating that he has known Thomas V. Novotny Sr. since 1926, that he saw and examined the certificate of admission of Thomas V. Novotny Sr., and found it to be genuine, bearing the signature of the Clerk of the Supreme Court of Illinois, and the Seal of the Supreme Court of Illinois.

The decision herein was rendered by the Supreme Court on the 21st day of March 1944, in which decision it is ordered and adjudged that the Respondent, Thomas V. Novotny Sr., be found guilty of Contempt, and be assessed a fine of $500.00.

Respondent thereupon, on the 11th day of April, 1944, filed his Petition for a rehearing, and the Relators also, on 15th day of April, 1944, filed their Petition for an amendment of the Opinion. Both Petitions were denied by the Supreme Court, but the Opinion was somewhat changed, leaving the result the same as ordered in the original Opinion.

THE CONTESTED ISSUES.

I.

It is the contention of the Petitioner, that the Supreme Court of Illinois erred in holding the Petitioner in Contempt of Court, without a hearing and solely upon the Information and Reply.

II.

The Supreme Court of Illinois erred in not referring the cause to a Commissioner, for a hearing as to the truth of Relators' Reply.

III.

The decision of the Supreme Court of Illinois is in violation of the Fifth Amendment to the Constitution of the United States.

IV.

The decision of the Supreme Court of Illinois is in violation of the Seventh Amendment to the Constitution of the United States.

V.

The decision of the Supreme Court of Illinois is in violation of the Eighth Amendment of the Constitution of the United States.

PRAYER FOR RELIEF.

WHEREFORE, your Petitioner prays the allowance of a Writ of Certiorari to the Supreme Court of Illinois, to the end that this cause may be reviewed and decided by this Court and the judgment and Order entered herein by the Supreme Court of Illinois be reversed, and for such relief as to this Court may seem meet.

Thomas V. Haverstyle

THE PEOPLE OF THE STATE OF ILLINOIS,
EX REL.

THE CHICAGO BAR ASSOCIATION, ET. AL.

Relators-Respondents,

vs.

THOMAS V. NOVOTNY SR.,

Respondent-Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The decision of the Supreme Court of Illinois is in violation of the Fifth Amendment to the Constitution of the United States, in that the Respondent, Thomas V. Novotny Sr., was held to be in Contempt of Court, without due process of Law.

U. S. v. *Abilene & S. Railway Co.*, 265 U. S. 274.
Interstate Commerce Commission v. *Louisville & National R. R.*, 227 U. S. 88.
Japanese Immigrant case, 189 U. S. 86.
Morgan v. *United States*, 298 U. S. 478.
Baltimore & Ohio Railroad v. *U. S.*, 264 U. S. 268.
Ex parte Garland, 4 Wall, 378; 71 U. S. 370.

II.

The decision of the Supreme Court of Illinois is in violation of the Seventh Amendment to the Constitution of the United States, in that no fact tried by a jury shall

be otherwise re-examined in any Court of the United States, than according to the Rules of the common Law.

People v. *Johnson*, 212 Ill. 615.
People v. *Goodman*, 366 Ill. 345.
Saravana v. *Saravana*, 222 Ill. 223.
Ex Parte Watkins, 3 Peters (U. S.) 193.
Sanger v. *Wilson*, 160 Ill. 623.

III.

The Decision of the Supreme Court of Illinois is in violation of the Eighth Amendment to the Constitution, in that the Petitioner has been subjected to a cruel and unusual punishment.

ARGUMENT.

I.

May it Please the Court:

May we begin by informing the Court that we are fully familiar with the case of *Bradwell* v. *Illinois*, 83 U. S. 442, and we will not ask this Court to overrule or in any manner alter the Opinion in that case. We will, however, endeavor to distinguish that case from the one at Bar. In the *Bradwell* case it was held that the power of a State to prescribe the qualifications for Admission to the Bar of its own Courts, is unaffected by the 14th Amendment to the Constitution of the United States, and this Court cannot inquire into the reasonableness or propriety of the Rules it may prescribe. With that rule we find no fault. However, this is not a case where Petitioner is seeking to be admitted to practice Law in Illinois and has been refused so to do by the Supreme Court of Illinois, but rather the question here is, after a Supreme Court has admitted your Petitioner to practice Law, can a subsequent Supreme Court, thirty-one years afterward, without an opportunity to be heard, declare that he is in contempt of Court for having used the privilege granted him thirty-one years before? May we call the Court's attention to the fact that this is not a disbarment proceeding. There is not a single statement in the Information that the Respondent has not at all times conducted himself in his practice of Law, according to the Laws of the State of Illinois, the ethics of the American Bar Association, the Illinois Bar Association, and the Chicago Bar Association.

There is no reference in the Opinion, to any misconduct of Petitioner during the time he was practicing Law, and the Decision is not based upon any such fact. The Opinion states: "The admission of an individual to "practice Law, is a judicial matter, and can be exercised "only by the Courts, but the manner of establishing "proof that one is a licensed Attorney, when the question "is properly in controversy, is a legislative matter. * * * "In his Answer Novotny admits he is not enrolled. He "claims he received a Certificate from the Clerk of the "Supreme Court, in June 1912, but it is obvious that this "alone does not meet the requirements of the Practice at "Common Law, or of the Statutes. The requirement is "that his name appear upon the Roll of Attorneys."

It is obvious that this cannot be the sole test. First, because the Legislature cannot prescribe that any fact shall be conclusive evidence. Second, the Legislature cannot take away the right of the Courts to exercise the granting of licenses, and vest that power in some other official.

It is no answer to this proposition to say that the individual can Mandamus the Courts to have his name enrolled, as, under this Opinion, no evidence would be permitted, except the Roll, to show that the individual either had or had not complied with the Rules and Regulations. The Roll, according to this Opinion, is conclusive.

In the case of *People* v. *Petit*, 266 Ill., on page 631, it is said "The rendition of a judgment is the act of the Court, and can, ordinarily, be proved only by the Record. The judgment exists, however, from the time the Court acts, even though the entry of the judgment may not have been formally written by the Clerk."

It is also there said: "It was his (the Clerk's) duty

"to enter of Record, the judgment so rendered, but his "failure to do so within any particular time did not make "invalid the execution which was valid when issued. (In "this case, the certificate of admission.) *The judgment "of the Court did not cease to be a judgment because the "Clerk failed to enter it of Record.* (Italics ours.) He "might be liable to a penalty for his neglect of duty, but "the judgment of the Court did not lose its binding ef- "fect, and it was still his duty to enter it of Record."

The construction of Sec. 6—Ill. Revised Statute, 1941, Chap. 13, made by the Illinois Supreme Court, renders said Section unconstitutional and void, in that the Legislature may provide that a designated fact or facts shall be *prima facie* evidence of a certain fact, but cannot make it conclusive so that it may not be overcome by other competent evidence.

People v. *McBride*, 234 Ill. 146.
Shellabarger Elec. v. *I. C. R. R.*, 278 Ill. 333.

In the Shellabarger case, the Court said:

> "There is no doubt about the power of the Legis- "lature to establish rules of evidence, to change the "burden of proof, or to declare that a fact from "which an inference as to the existence of another "fact may reasonably be drawn should be regarded "as evidence of the latter fact, (*People* v. *McBride*, "234 Ill. 146; *Waugh* v. *Glos*, 246 *id.* 604) but it is "not competent for the Legislature to declare, in "such case, that the existence of the first fact shall "conclusively establish the existence of the second. "(*People* v. *Rose*, 207 Ill. 352; *People* v. *Baltimore &* "*Ohio Southwestern R. R. Co.*, 246 *id.* 474.) In the "first case cited we said that it was not within the "power of the Legislature to declare what shall be "conclusive evidence, as that would be an invasion "of the power of the Judiciary."

Therefore we submit that when the Legislature has said that "No person whose name is not on said Roll,

"shall be suffered or admitted to practice as an Attor-
"ney or Counselor at Law in any Court of record within
"this State," said Act is unconstitutional and void, in that it would be an invasion of the power of the Judiciary. That the Legislature cannot vest the right to grant licenses to practice Law, in some official, is too obvious to need comment.

According to this Opinion, if it be admitted that the applicant has fully complied with the Statutes, and the Rules of the Supreme Court, as is the fact in the case at Bar, and the Supreme Court of Illinois did order the Clerk of the Court to enroll the applicant, the Clerk may, either through negligence or for some personal reason of his own, fail to enroll the applicant, and thereby deprive the applicant from that which he was granted by the Court. Surely such power of the Legislature either to declare any fact conclusive evidence or to make the act of the Clerk conclusive of the right to practice Law, is clearly in violation of the 5th Amendment to the Constitution of the United States, as not being "Due process of Law".

In the case of *Ex Parte* v. *Garland*, 4 Wall. 378, (71 U. S. XVIII 370) this Court says:

> "They (Attorneys) are officers of the Court, ad-
> "mitted as such by its order, upon evidence of their
> "possessing sufficient legal learning and fair private
> "character they hold their office during good behav-
> "ior, and can only be deprived of it for misconduct,
> "ascertained and declared by the Court after oppor-
> "tunity to be heard has been offered. * * * Their
> "admission or their exclusion is not the exercise of
> "a mere ministerial power. It is the exercise of Ju-
> "dicial power."

In the case at Bar, the Court holds that the Clerk of Court can, by the exercise of his ministerial power, to

enroll or not to enroll, grant the applicant the right to practice Law.

We therefore submit that the ruling of the Supreme Court of Illinois violates the 5th Amendment to the United States Constitution, and that this Court should hold that, it being admitted that your Petitioner, having fully complied with the requisites of admission, and having been admitted by the Supreme Court of Illinois, cannot be deprived of the right to practice Law by the mere failure of the Clerk of the Court to enroll Petitioner's name on the Roll of Attorneys.

Counsel for Relators, the Chicago Bar Association, not only agree with this construction of our Statute, but have in fact tried to impress this rule on our Supreme Court.

Upon the rendering of the Opinion by our Supreme Court, they immediately filed a "Petition for rehearing", for a modification of the language of the Opinion, (page 51-B of Record) in which they say:

"The essence of the Court's decisions, therefore, from *in re Day*, onward, is that in the field of law this (the Supreme) Court, is supreme. The Court has repeatedly, as in the *Motor Club* cases, and in the *Goodman* case, disregarded legislative enactments which would tend to hinder in its power to suppress unauthorized practice by laymen. *This Court, in governing its actions in this realm, is itself the supreme legislature.*" (Italics ours.)

Again: "This Court itself has, in this type of case, repeatedly referred contested issues of fact to a Commissioner."

We believe we are entitled, under the Constitution of the United States, to a hearing before a Commissioner.

II.

The Decision of the Supreme Court of Illinois is in violation of the 7th Amendment of the Constitution of the United States.

The Reply of the Respondent to the Information sets forth that on the 9th day of February 1930, Respondent was tried before a jury, in the Municipal Court of Chicago, for practicing Law without having procured a license, and that a verdict and judgment was rendered therein, finding Respondent "Not Guilty". The Reply sets forth that said Court was a Court of Competent Jurisdiction, and that the sole issue in said cause was whether or not Respondent had been admitted to practice Law in the State of Illinois; and that said judgment stands now, and has at all times been in full force and effect. A certified copy of said proceedings was attached and made a part of the Answer; and such facts are nowhere denied by the Information, or by the Opinion of the Supreme Court of Illinois.

In the case of *People* v. *Johnson*, 212 Ill., p. 615, a disbarment proceeding, the Court said:

> "We are of the opinion that the judgment of the "Criminal Court of Cook County, acquitting the Re- "spondent of the charge of having embezzled the "funds collected by him, as an Attorney at Law, "should be held to be a bar to this proceeding. The "foregoing seems to be the rule in all the Courts of "this Country."

In *Ex Parte Watkins*, 3 Peters (U. S.) 193, the Supreme Court of the United States, speaking through Chief Justice Marshall, said:

> "A judgment, in its nature, concludes the subject "on which it is rendered, and pronounces the law of "the case. The judgment of a Court of Record whose

"jurisdiction is final, is as conclusive on all the "world as the judgment of this Court would be. It "is as conclusive *on this Court* as *it is on other* "*Courts*. It puts an end to inquiry concerning the "fact by deciding it."

Likewise, Stern on Constitutional Law, (1882), page 121, says:

"One of the most important protections to indi- "vidual liberty, embodied in the Constitution of the "United States, is the Seventh Article of the Amend- "ments, which provides that no fact tried by a jury "shall be re-examined by any Court in the United "States otherwise than according to the rules of "common Law. This secures citizens of the United "States against vexatious proceedings by which they "may be again and again harrassed on the same sub- "ject matter of complaint after the matter has once "been judicially determined. When so judicially de- "termined, both the laws of the States and the pro- "cedures of the Courts of the United States provide "for proper appeals, by means of which the question "of errors may be considered and determined, and "thus alone the subject matter of the controversy "may be reviewed. When determined, however er- "roneously, by a Court of last resort, or by a com- "petent judicial tribunal from whose judgment no "appeal has been taken, the judgment is to be con- "sidered final, and in the interests of justice not to "be shaken nor to be re-examined *by any department* "*or any special Court or* by any other Court, as be- "tween the same parties." (Italics ours.)

The Supreme Court of Illinois has repeatedly held that a judgment of conviction in a criminal case, by a Court of competent jurisdiction, is conclusive evidence of his guilt, in a disbarment proceeding.

In re. Needham, 364 Ill. 65.

People ex rel. v. *Templeman*, 363 Ill. 152.

A judgment of "Not Guilty" should, therefore, be just as conclusive, especially where the same and identical question was decided in the former trial.

III.

The Decision of the Supreme Court of Illinois is in violation of the 8th Amendment of the Constitution of the United States.

Be it remembered that neither in the Information nor in the Opinion of the Supreme Court is it alleged or stated that the Respondent in any manner violated his Oath of Office as an Attorney, or in any way or manner violated any of the Ethics of the American Bar Association, the Illinois Bar Association, or the Chicago Bar Association. By the Court's Opinion he is held in Contempt of Court, and assessed a fine of $500.00, for no other reason than that the Clerk of the Supreme Court neglected to enter his name on the Roll of Attorneys. By this Decision Respondent is, of course, forever barred from practicing Law in the State of Illinois.

We believe that the finding of the Illinois Supreme Court is an excessive fine, and cruel and unusual punishment, and contrary to the 8th Amendment of our Constitution.

The Answer of the Respondent to the Information sets forth that Respondent is now of the age of 60 years, and is the father of 4 sons and 2 daughters, five of his said children now being in the service of the armed forces of the United States; that he has at all times enjoyed the respect of his neighbors and citizens of the community in which he resides, and that he has for the past 31 years been practicing Law in the State of Illinois under the belief that he had been duly licensed and qualified as an Attorney at Law, according to the Statutes of the State of Illinois.

In the case of *People* v. *Allison*, 68 Ill., page 151, the Court says:

> "The charge is a serious one, and if Respondent "be found guilty, the consequences would be disas- "trous."

Surely this rule should apply to the case at Bar. If Respondent is compelled to cease practicing Law, his only means of maintaining himself, wife and minor daughter, is taken away, as the Government has already taken away those upon whom he could rely in his old age. He is too old to adapt himself to some other livelihood. Certainly a most cruel and unusual punishment imposed upon him, not because of any act done by him but solely by reason of the Clerk of the Court neglecting his duty.

Although it was entirely unnecessary and not in issue in this case, it is stated in the Opinion that:

> "The Information also charges Respondent was "disbarred in the State of Minnesota, July 25, 1913, "as shown in *State Board of Law Examiners* v. *No-* "*votny*, 122 Minn. 490; 142 N. W. 733, and that his "reinstatement was denied in that State in 1925, *in* "*re Novotny*, 161 Minn. 503, 201 N. W. 949. No an- "swer or denial is filed to this charge in the infor- "mation."

The statement that no answer or denial was filed to that charge in the information, is not a correct statement of the Record.

Attached to Respondent's Reply to the Information, were suggestions in support of a Motion to dismiss the Information. It is therein stated that:

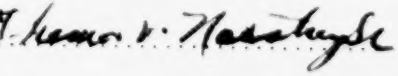
> "In a proceeding of this kind, Respondent can only "be tried on the specific charge against him, con- "tained in the Information.
>
> "*People* v. *McCaskrin*, 325 Ill. 149.
>
> "*People* v. *Allison*, 68 Ill. 151.

"The Information alleges that Respondent was "disbarred in Minnesota, on July 23, 1913, more than "one (1) year after he was admitted to practice law "in this State. There is no allegation in said Infor- "mation that, at the time he made application for "admission in this State, that any proceedings were "pending in Minnesota for his disbarrment there; "or, that he, this Respondent, had any knowledge of "the pendency of any such proceeding. His certifi- "cate of good, moral character was sworn to by a "Judge of the District Court of Ramsey County, "Minnesota, and a prominent lawyer of Ramsey "County."

Respondent did, therefore, contrary to the statement of the Supreme Court, answer the charge of disbarrment proceedings in Minnesota.

We have attached hereto the Sections of the Statutes of Illinois pertinent to the question involved, and a facsimile of Petitioner's certificate of admission, which we believe clearly should convince this Court that a great injustice has been done to the Petitioner, in violation of his Constitutional rights, and that a Writ of Certiorari should be granted, and upon a full hearing this Court should hold that Petitioner is not and was not in Contempt of Court, and that Petitioner should be declared to have a right to continue to practice Law in the State of Illinois, until upon a hearing it is decided that he has forfeited that right.

Respectfully submitted,



PEOPLE ex rel. CHICAGO BAR ASS'N *vs.* NOVOTNY et al.

No. 27797

Supreme Court of Illinois
March 21, 1944

As Modified on Denial of Rehearing May 11, 1944

PER CURIAM.

This is an original proceeding brought by the People of the State of Illinois, upon relation of the Chicago Bar Association, against Thomas V. Novotny, Sr., charging him with contempt and holding himself out to be a lawyer admitted or licensed to practice law in the State of Illinois, and practicing law when in fact he is a layman and not authorized so to do. The information also charges that Herman P. Haase was aiding and abetting respondent Novotny in the unauthorized and illegal practice of law, and is also guilty of contempt. Both respondents were by order of this court required to show cause why they should not be punished for contempt, and thereupon both have filed their respective answers in response to such rule entered upon the filing of the information.

The information charges that Novotny maintains an office located at No. 82 West Washington street, Chicago, Illinois; that these offices are shared with Herman P. Haase; that Novotny is a layman and not admitted to practice law; that he has placed upon the doors of his office, and upon his letterheads, and upon his pleadings words designating he is an attorney at law; that he has also caused his name to be inserted in certain legal directories advertising he is a lawyer; that he has caused certain advertisements and notices to be printed and distributed advertising he is an attorney at law; that he has appeared in a certain cause now pending in this court, in

the abstract, brief and argument of which he is designated as attorney for appellant; and that in the suggestions in opposition to the motion for leave to file an information there is shown upon the outside wrapper a designation he is an attorney at law. The information also alleges that at the January term, 1943, of this court he filed a petition to have his name placed upon the roll of attorneys, claiming he was entitled thereto because of a motion claimed to have been made before this court June 22, 1912, based upon a license obtained in the State of Minnesota, and that he is now holding himself out as a duly admitted and licensed lawyer in violation of the laws of Illinois, and in contempt of this court, and prays that he may be restrained from further practicing and be punished for contempt.

The answer of respondent Novotny denies he is a layman, and alleges he has been for the past thirty-one years a duly licensed and qualified attorney-at-law in the State of Illinois, and has complied with all of the rules and regulations of this court; admits the specific act of practicing law alleged in the information. He also admits he filed his petition in this court at the January term, 1943, to have his name placed upon the roll of attorneys, and says that he has not been notified of the court denying such right or privilege to have his name placed upon the roll of attorneys, but says he was notified said petition was dismissed as not being sufficient in law, because it did not state facts upon which this court could grant the prayer. He also says he is a graduate of St. Paul's College of Law; that he was admitted to practice law in the State of Minnesota in 1907; that he came to Illinois at the request of another attorney in 1912, and associated himself with another law firm, and that June 22, 1912, upon the motion of two lawyers, and upon presenting to this court a certificate of good moral character, this hon-

orable court instructed the clerk to administer the oath of office, and to enroll his name upon the roll of attorneys of record of this court, and that he did take the oath of office, and in due time a certificate of admission was mailed to and received by respondent.

Further by way of answer he claims that in 1929 a complaint was filed against him in the municipal court of Cook county charging him with the practicing of law without a license, and that upon a trial before a jury he was found not guilty; that for thirty-one years, with the knowledge of the State's Attorney of Cook county, the Attorney General and the Bar Association he has held himself out as a duly licensed and qualified attorney at law, and that he has been authorized to consult with prisoners in the county jail of Cook county as a licensed attorey, and that because for thirty-one years no information has been filed the People have been guilty of laches, and prays that if the court is not inclined to dismiss the information because of the matters set forth in the answer, then in the alternative to refer the information and answer to a commissioner, where they may be more fully heard.

The information also charges respondent was disbarred in the State of Minnesota, July 25, 1913, as shown in the *State Board of Law Examiners* v. *Novotny*, 122 Minn. 490, 142 N. W. 733, and that his reinstatement was denied in that State in 1925 in *In re Novotny*, 161 Minn. 503, 201 N. W. 949. No answer or denial is filed to this charge in the information.

Respondent is proceeding upon the theory that receiving a certificate from the Clerk of the Supreme Court is sufficient to make him a duly constituted and qualified lawyer authorized to practice in this State. From time immemorial the names of authorized attorneys have ap-

peared upon the roll of attorneys in the place designated for such purpose. *In re Day*, 181 Ill. 73, 54 N. E. 646, 50 L. R. A. 519. *In re Fellows*, 2 Scam. 369, we held that an attorney who had neglected to have his name enrolled on the roll of attorneys at the date of his license cannot thereafter have it enrolled nunc pro tunc to avoid liability for practicing as an attorney or receiving fees before his name was enrolled.

[1, 2] Section 5 of the Act relating to attorneys and counselors (Ill. Rev. Stat. 1941, chap. 13, par. 5) provides: "It shall be the duty of the clerk of the Supreme Court, * * * to make and keep a record, stating at the head thereof that the persons whose names are therein written have been regularly licensed and admitted to practice as attorneys and counselors at law within this state, and that they have duly taken the oath of office as prescribed by law, which shall be certified and indorsed on the said license." Section 6 of the same act provides "No person, whose name is not on the said roll, * * * shall be suffered or admitted to practice as an attorney or counselor at law in any court of record within this state, * * *." The practice before the enactment of such statute required, and the statute now in force requires, enrollment as the proof of the right to engage in the practice of law. The admission of an individual to practice is a judicial matter and can be exercised only by the courts, but the manner of establishing proof that one is a licensed attorney, when the question is properly in controversy, is a legislative matter. The provision requiring enrollment is not only for the purpose of making it the proof of admission to practice, but also to prevent frauds by the existence of fictitious certificates.

[3, 4] The information alleges that respondent Novotny is a layman. In his answer Novotny admits he is not enrolled. He claims he received a certificate from the

Clerk of the Supreme Court in June, 1912, but it is obvious that this alone does not meet the requirements of the practice at common law or of the statute. The requirement is that his name appear upon the roll of attorneys. Permitting the clerk's certificate to constitute proof of admission, when directly questioned, might lead to fraud, but enrollment would foreclose such a possibility, and is therefore made the test. The other matters set out in the answer of Novotny do not tend to make a defense. His acquittal of a criminal charge of practicing law without a license is not at variance with the powers of the court to dispose of such matters either summarily or upon an information for contempt. *People* v. *Hubbard*, 313 Ill. 346, 145 N. E. 93.

The other matters set out in the answer do not tend to disprove the offense charged in the information.

[5, 6] A different situation is presented by the case of respondent Herman P. Haase. The information alleges that he is duly licensed to practice law in Illinois, and the only charge made against him is that "he is aiding and abetting the respondent Thomas V. Novotny in the unauthorized and illegal practice of the law," and therefore is in contempt of court. The answer of Haase states he does not know whether Novotny is a qualified licensed attorney; that since January, 1943, they have maintained an office together; that he at no time had any information or knowledge from any source whatever that Novotny had been disbarred in the State of Minnesota, and no knowledge that he was not qualified to practice in Illinois, but, on the contrary, from evidence handed to him at the time the said Novotny made his application in this court to be placed upon the roll of attorneys, believed he was entitled to practice law in this State. And further answering he says that in case the court should decide that

Novotny is not a duly licensed and qualified attorney he will sever all professional relations with him. There is no allegation in the information that respondent Haase knowingly, wilfully or fraudulently aided and abetted the said Novotny in his contempt, and knowwledge or connivance is positively denied by the respondent Haase. To aid and abet a violation of the law requires knowledge and intent, and knowledge not being charged in the information, and being specifically denied in the answer is, we think, sufficient to purge him of the offense. We think this result is justified because it appears from the answer that he had seen nothing, or known nothing of Thomas V. Novotny for thirteen years prior to the time they entered into their partnership arrangement.

[7] While it is required of an attorney procuring a license to see that his name is entered upon the roll of attorneys such knowledge is not required of persons associated with, employing or transacting business with such attorney. With many thousands of lawyers admitted to practice law, and the roll of attorneys being located in the capital of the State, it would be an unreasonable and intolerable burden upon persons transacting business, or associating themselves with lawyers, to be subject to a charge of accessory to a contempt merely by failure to examine the roll of attorneys in the office of the Clerk of the Supreme Court.

It is the order of the court that Herman P. Haase be deemed purged of his contempt and the information as to him dismissed. It is the order and judgment of the court that the respondent Thomas V. Novotny be found guilty of contempt, and be assessed a fine of $500.

Information dismissed as to Haase; judgment of contempt as to Novotny.

APPENDIX.

Constitution of the United States.

Amendment V.

"No person shall be held to answer for a capital, or "otherwise infamous crime, unless on a presentment or "indictment of a grand jury except in cases arising in "the land or naval forces, or in the militia, when in ac- "tual service in time of war or public danger; nor shall "any person be subject for the same offense to be twice "put in jeopardy of life or limb; nor shall be compelled "in any criminal case to be a witness against himself, "nor be deprived of life, liberty, or property, without "due process of law; nor shall private property be taken "for public use, without just compensation."

Constitution of the United States.

Amendment VII.

"In suits at common law, where the value in contro- "versy shall exceed twenty dollars, the right of trial by "jury shall be preserved, and no fact tried by a jury "shall be otherwise re-examined in any Court of the "United States, than according to the rules of the com- "mon law."

Constitution of the United States.

Amendment VIII.

"Excessive bail shall not be required, nor excessive "fines imposed, nor cruel and unusual punishment in- "flicted."

Statute in Force in State of Illinois, In June 1912.

Illinois Revised Statute, Sec. 1, Chapter 13.

"Be it enacted by the People of the State of Illinois, "represented in the General Assembly, That no person "shall be permitted to practice as an Attorney or Coun- "selor at Law, or to commence, conduct or defend any "action, suit or plaint, in which he is not a party con- "cerned, in any court of record within this State, either "by using or subscribing his own name, or the name of "any other person, without having previously obtained "a license for that purpose from some two of the jus- "tices of the Supreme Court, which license shall consti- "tute the person receiving the same an attorney and "counselor at law, and shall authorize him to appear in "all courts within this state, and there to practice as an "attorney and counselor at law, according to the laws "and customs thereof, for and during his good behavior "in said practice, and to demand and receive fees for "any services which he may render as an attorney and "counselor at law in this state. No person shall be re- "fused a license under this act on account of sex."

Illinois Revised Statute, Sec. 3, Chapter 13.

"Any person producing a license or other satisfactory "voucher proving that he hath been regularly admitted "an attorney at law, in any court of record within the "United States, and obtaining a certificate of good moral "character, as required in the preceding section, may be "licensed and permitted to practice as a counselor and "attorney at law, in any court in this state, without ex- "amination."

ILLINOIS REVISED STATUTE, SEC. 5, CHAPTER 13.

"It shall be the duty of the clerk of the Supreme Court, "in each grand division, to make and keep a roll or rec- "ord, stating at the head thereof that the persons whose "names are therein written have been regularly licensed "and admitted to practice as attorneys and counselors at "law within this state, and that they have duly taken "the oath of office as prescribed by law, which shall be "certified and indorsed on the said license."

ILLINOIS REVISED STATUTE, SEC. 6, CHAPTER 13.

"No person, whose name is not on the said roll, with "the day and year when the same was written thereon, "shall be suffered or admitted to practice as an attorney "or counselor at law in any court of record within this "state, and the jurisdiction of the Supreme Court, in "open court, shall have power at their discretion to strike "the name of any attorney or counselor at law from the "roll for mal-conduct in his office; and any judge of a "circuit court, or of the superior court of Cook County, "shall, for like cause, have power to suspend any attor- "ney or counselor at law from practice in the court over "which he presides, during such time as he may deem "proper, subject to the right to have such order set aside "by the Supreme Court upon appeal."

STATE OF ILLINOIS SUPREME COURT.

.....of.....County, Illinois, having exhibited to the undersigned, the Justices of the Supreme Court of said State, satisfactory evidence of his good moral character and of his qualifications to practice as an Attorney and Counselor at Law in the Courts of this State;

We do therefore hereby authorize and license the said .....to practice as such Attorney and Counselor, according to the Laws and Customs of said State for and during his good behavior in said practice.

Witness our hands this.....day of.....

.....Chief Justice.

.....Justice. .....Justice.
.....Justice. .....Justice.
.....Justice. .....Justice.

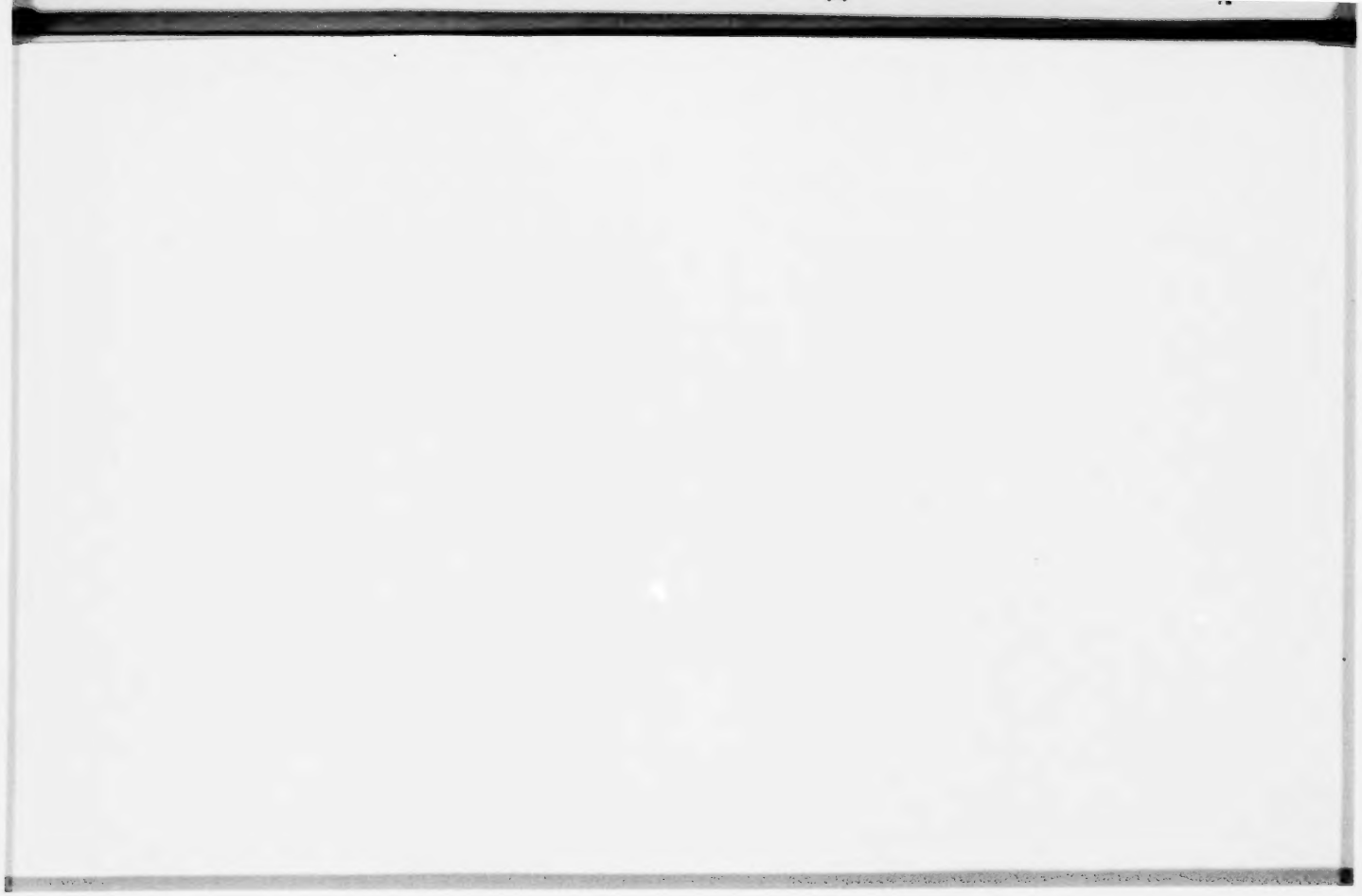
STATE OF ILLINOIS, SUPREME COURT,
NORTHERN GRAND DIVISION.

I, ..., Clerk of said Supreme Court, do hereby certify that..... has been regularly licensed and admitted to practice as an Attorney and Counselor at Law within this State, and that he has duly taken the oath to support the Constitution of the United States and of this State, and also the Oath of Office prescribed by Law, and that I have duly enrolled his name on the Roll of Attorneys and Counselors in my office.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court, at Springfield, this .....

.....

(SEAL) Clerk Supreme Court.



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. 336

IN THE MATTER OF

THOMAS V. NOVOTNY, SR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. THE CHICAGO BAR ASSOCIATION, ET AL.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

CHARLES LEVITON,
Counsel for Respondent, The Chicago Bar Association, Relator,
29 South La Salle Street,
Chicago, Illinois.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

INDEX.

Subject Index.

Cases Cited.

Statutes Cited.

United States Constitution Cited.

Rules of the Supreme Court of the United States Cited.

Rules of the Supreme Court of Illinois Cited.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

IN THE MATTER OF

THOMAS V. NOVOTNY, SR.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. THE CHICAGO BAR ASSOCIATION, ET AL.,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

1.

The opinion below is reported in 386 Illinois Supreme Court Reports at p. 536.

2.

Jurisdiction.

The jurisdiction of this Court if exercised may be invoked under Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925 (Section 344, Title 28, U. S. C. A.).

3.

Questions Presented.

The questions presented are:

(1) Has the petitioner set up any title, right, privilege or immunity under the Federal Constitution?

An inspection of the record shows that the petitioner in the court below raised no question under the Federal Constitution. His answer (Record, pp. 10-17) is completely devoid of any tender of an issue involving the Federal Constitution. His petition for rehearing (Record, p. 47) refers to Stern on Constitutional Law (1882), p. 121, but does not contain a quotation from the volume, and no mention of the Federal Constitution or any of the amendments is contained either in the answer or the petition for rehearing. Constitutional questions are first raised in the petition for certiorari filed herein.

The petitioner cannot raise federal questions here, when he did not raise them in the Supreme Court of Illinois.

Hulbert v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1026.

(2) Did the decision of the Supreme Court violate the Fifth, Seventh and Eighth Amendments to the Federal Constitution?

These amendments to the Constitution, as has been repeatedly decided, do not limit the power of the states.

See, as to the Fifth Amendment:

Palko v. *Connecticut*, 302 U. S. 319, p. 322, 82 L. Ed. 288, p. 290.

As to the Seventh Amendment:

Ohio v. *Dollison*, 194 U. S. 445, 48 L. Ed. 1062.

Minneapolis and St. Louis Railroad Co. v. *Bombolis*, 241 U. S. 211, p. 217, 60 L. Ed. 961, p. 963.

And, as to the Eighth Amendment:

Collins v. *Johnston*, 237 U. S. 501, pp. 510-511, 59 L. Ed. 1071, p. 1079.

Ughbanks v. *Armstrong*, 208 U. S. 481, 52 L. Ed. 582.

These are the only constitutional provisions referred to in the petition for writ of certiorari (see petition, p. 8, "The Contested Issues," pp. 10-11, "Brief in Support of Petition for Writ of Certiorari," and pp. 12-21, "Argument").

(3) Will the Supreme Court of the United States take jurisdiction over a judgment involving a question peculiarily of state law?

The petitioner's answer admitted that his name did not appear on the roll of attorneys (Transcript of Record, p. 11).

Novotny was adjudicated guilty of contempt by the Supreme Court of Illinois because he was engaged in the practice of law without being licensed. The Supreme Court of Illinois has heretofore in various cases taken action and punished those guilty of the unauthorized practice of law.

See:

People v. *Goodman*, 366 Ill. 346.

People v. *Chicago Motor Club*, 362 Ill. 50.

People v. *Motorists Association*, 354 Ill. 595.

People v. *Real Estate Taxpayers*, 354 Ill. 102.

People v. *People's Stock Yards State Bank*, 344 Ill. 462.

The Supreme Court of the United States has already passed upon the right of the state to exclude women from the practice of the law.

See:

Bradwell v. *Illinois*, 16 Wall. 130, 21 L. Ed. 442.

Ex Parte Lockwood, 154 U. S. 116, 38 L. Ed. 929.

In *Bradwell* v. *Illinois*, it is held that the right to control and regulate the granting of licenses to practice law by the courts of the states is one of those powers which is not transferred for its protection to the Federal Government.

This Court has denied certiorari in a case involving punishment for contempt for the unauthorized practice of law where a federal question under the Fourteenth Amendment was raised by the petitioner, in *People* v. *Goodman*, 366 Ill. 346, *supra*. (See *Goodman* v. *People of the State of Illinois ex rel. Chicago Bar Association*, 302 U. S. 728, 82 L. Ed. 562.)

STATEMENT.

A motion for leave to file an information was presented to the Supreme Court of Illinois on November 13, 1943. Together with the motion there was presented the information (Record, pp. 1-9) and there were also filed certain suggestions (Record, pp. 9-10) in support thereof. From the information it clearly appears that the petitioner was practicing law openly in the City of Chicago, County of Cook and State of Illinois, and held himself out to be a lawyer, with law offices at 82 West Washington Street, Chicago. It is alleged that Novotny was not admitted or licensed to practice law in the state, that an application to have his name placed upon the roll of attorneys was denied at the January, 1943, term of the Supreme Court of Illinois. Petitioner in his answer admitted that his application to have his name enrolled on the roll of attorneys was denied, and that his name did not appear upon the roll of attorneys of the Supreme Court of Illinois. He claimed the right to practice law in spite of this fact and contended that he actually had been admitted to the practice of law in 1912. In further exculpation, his answer set forth that there had been a criminal proceeding brought against petitioner for practicing law without having a license, in the year 1929, and that the jury found him not guilty. His answer and exhibits and suggestions attached thereto are contained in the Record, pp. 10-27.

ARGUMENT.

I.

The Petitioner Has Not Set Up Any Title, Right, Privilege or Immunity Under the Federal Constitution.

At no time, in either his answer or his petition for rehearing in the court below, did the petitioner contend that any part of the Federal Constitution was violated. The so-called constitutional questions urged by the petitioner are now first raised by the petition filed herein.

The Judicial Code, Section 237 (b) as amended (Section 344, Title 28, U. S. C. A.), clearly provides that it shall be competent for the Supreme Court of the United States by certiorari to certify for review and determination any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had, where "any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution." There being no such right set up or claimed, there is nothing for this Court to review.

In *Hulbert* v. *Chicago*, 202 U. S. 275, 50 L. Ed. 1026, the Court held that the plaintiff had failed to comply with the statutory provision in setting up a right under the Constitution of the United States; that there was no evidence in the record to show that the decision of either the trial court or the Supreme Court of Illinois, whose judgment was questioned, was invoked by plaintiff in error upon a right claimed under the Constitution of the United States. The writ of error was therefore dismissed. This rule is so elementary and of such long standing that no further discussion of the issues involved would seem necessary.

II.

The Decision of the Supreme Court of Illinois Does Not and Cannot Violate the Fifth, Seventh and Eighth Amendments to the Federal Constitution.

In *Palko* v. *Connecticut*, 302 U. S. 319, p. 322, 82 L. Ed. 288, p. 290, the Court held that the Fifth Amendment is not directed to the states but solely to the Federal Government.

In *Ohio* v. *Dollison*, 194 U. S. 445, 48 L. Ed. 1062, the Court held that it is well established that the first eight Articles of the Amendments to the Constitution of the United States have reference to powers exercised by the government of the United States and not to those of the states.

In *Minneapolis and St. Louis Railroad Co.* v. *Bombolis*, 241 U. S. 211, p. 217, 60 L. Ed. 961, p. 963, the Court held that the first ten Amendments are not concerned with state action and deal only with federal action, that the Seventh Amendment applies only to proceedings in the courts of the United States and does not in any manner whatever govern or regulate trials by jury in state courts, that so completely and conclusively have both of these principles been settled, that to grant that they are open to contention would be to grant that nothing whatever had been settled as to the power of state and federal governments or the authority of state and federal courts in their mode of procedure from the beginning.

In *Collins* v. *Johnston*, 237 U. S. 501, 59 L. Ed. 1071, the Court specifically stated that the Eighth Amendment is a limitation upon the Federal Government and not upon the states.

See also *Ughbanks* v. *Armstrong*, 208 U. S. 481, 52 L. Ed. 582.

III.

The Question Involved Is One Peculiarly of State Law.

The petitioner does not claim that his name appears on the roll of attorneys. He was adjudicated guilty of contempt by the Supreme Court of Illinois because he was engaged in the practice of law without a license. In the early case *In re Day*, 181 Ill. 73, it was held that to regulate and define the practice of the law was the prerogative of the judicial department under the Constitution of the State of Illinois. The Supreme Court of Illinois has repeatedly punished for contempt laymen or lay agencies engaged in the practice of law in defiance of the requirements necessary therefor as announced by the Supreme Court. These decisions appear in *People* v. *Goodman*, 366 Ill. 346; *People* v. *Chicago Motor Club*, 362 Ill. 50; *People* v. *Motorists Association*, 354 Ill. 595; *People* v. *Real Estate Taxpayers*, 354 Ill. 102, and *People* v. *People's Stock Yards State Bank*, 344 Ill. 462.

The Supreme Court of Illinois has promulgated elaborate rules (see: Rules 58 and 59) covering admission to the Bar and proceedings to discipline attorneys. The regulations of the Supreme Court of Illinois would be set at naught if a layman could practice law in defiance of these provisions.

The petitioner here, however, claims that he is not a layman, but that although his name does not appear on the roll of attorneys, he actually was admitted to practice, having received a certificate from the Clerk of the Court, in 1912. The Court in its opinion (Record, p. 31), in response to this contention, refers to Section 5 of the act relating to attorneys and counselors in the Illinois Revised Statutes, which states in effect that no person whose name is not on the roll shall be admitted to practice as an attorney in any court of record; that the practice before the

enactment of the statute required, as the statute now in force does, enrollment as the proof of the right to engage in the practice of law; that the provision requiring enrollment is not only for the purpose of making it the proof of admission to practice, but also to prevent frauds by the existence of fictitious certificates; that to permit the Clerk's certificate to constitute proof of admission might lead to fraud, but enrollment would foreclose such a possibility and is therefore made the test.

This Court, in *Bradwell* v. *Illinois*, 16 Wall. 130, 21 L. Ed. 442, and *Ex Parte Lockwood*, 154 U. S. 116, 38 L. Ed. 929, has held that the right to regulate and control the licensing to practice law in the courts of the state does not involve a Federal matter.

Conclusion.

In conclusion, it is respectfully submitted that the petition for certiorari herein falls far short of complying with the principles contained in Rule 38, par. 5 (a), of this Court, to the effect that certiorari may issue where a state court has decided a federal question of substance not theretofore decided by this Court, or has decided it in a way probably not in accord with decisions of this Court.

The petitioner has not even approached the threshold of jurisdiction. He has raised no federal question of substance or otherwise. It is respectfully submitted that the prayer for writ of certiorari should be denied.

Respectfully submitted,

CHARLES LEVITON,
Counsel for Respondent, The Chicago Bar Association, Relator,
29 South La Salle Street,
Chicago, Illinois.